

effective in a given plan year. Compensation structures must be in place by the beginning of the plan marketing period, October 1.

(ii) Compensation structures must be available upon CMS request including for audits, investigations, and to resolve complaints.

(c) It must ensure that all agents selling Medicare products are trained annually through a CMS endorsed or approved training program or as specified by CMS, on Medicare rules and regulations specific to the plan products they intend to sell.

(d) It must ensure agents selling Medicare products are tested annually by CMS endorsed or approved training program or as specified by CMS.

(e) Upon CMS' request, the organization must provide to CMS, in a form consistent with current CMS guidance, the information necessary for it to conduct oversight of marketing activities.

(f) It must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

(g) A plan sponsor must report annually, as directed by CMS—

(1) Whether it intends to use independent agents or brokers or both in the upcoming plan year; and

(2) If applicable, the specific amount or range of amounts independent agents or brokers or both will be paid.

(h) *Finder's (referral) fees.* Finder's (referral) fees paid to all agents and brokers—

(1) May not exceed an amount that CMS determines could reasonably be expected to provide financial incentive for an agent or broker to recommend or enroll a beneficiary into a plan that is not the most appropriate to meet his or her needs; and

(2) Must be included in the total compensation not to exceed the fair market value for that calendar year.

[73 FR 54250, Sept. 18, 2008, as amended at 73 FR 67412, Nov. 14, 2008; 76 FR 21569, Apr. 15, 2011; 76 FR 54634, Sept. 1, 2011; 77 FR 22168, Apr. 12, 2012; 79 FR 29960, May 23, 2014]

§ 422.2276 Employer group retiree marketing.

MA organizations may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the MA organization, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

Subpart W [Reserved]

Subpart X—Requirements for a Minimum Medical Loss Ratio

SOURCE: 78 FR 31307, May 23, 2013, unless otherwise noted.

§ 422.2400 Basis and scope.

This subpart is based on section 1857(e)(4) of the Act, and sets forth medical loss ratio requirements for Medicare Advantage organizations, and financial penalties and sanctions against MA organizations when minimum medical loss ratios are not achieved by MA organizations.

§ 422.2401 Definitions.

Non-claims costs means those expenses for administrative services that are not—

(1) Incurred claims (as provided in § 422.2420(b)(2) through (4));

(2) Expenditures on quality improving activities (as provided in § 422.2430);

(3) Licensing and regulatory fees (as provided in § 422.2420(c)(2)(i));

(4) State and Federal taxes and assessments (as provided in § 422.2420(c)(2)(ii) and (iii)).

[78 FR 31307, May 23, 2013; 78 FR 43821, July 22, 2013]

§ 422.2410 General requirements.

(a) For contracts beginning in 2014 or later, an MA organization (defined at § 422.2) is required to report an MLR for each contract under this part for each contract year.

(b) *MLR requirement.* If CMS determines for a contract year that an MA organization has an MLR for a contract that is less than 0.85, the MA organization has not met the MLR requirement and must remit to CMS an